

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10
11

12 CHADERICK A. INGRAM,

13 Plaintiff,

14 v.

15 CITY OF SAN FRANCISCO, et al.,

16 Defendants.
17

Case No.: C12-3038 JSC

**ORDER DISMISSING PLAINTIFF'S
AMENDED COMPLAINT WITH
PREJUDICE AND DENYING HIS
MOTIONS FOR A GUARDIAN AD
LITEM AND APPOINTMENT OF
COUNSEL (Dkt. Nos. 3, 5, 11)**

18 Plaintiff, proceeding pro se, brings this 42 U.S.C. §1983 action against the City of San
19 Francisco, Fas Trak Violation Processing Department, City of Pittsburgh, Pittsburgh Police
20 Department, and Motel 6 “due to their professional misconduct.”¹ (Dkt. No. 1 at 1.) He
21 previously filed an application to proceed *in forma pauperis*, which was GRANTED. (Dkt.
22 No. 2.) The Court dismissed Plaintiff’s first complaint for failure to state a claim. (Dkt. No.
23 10.) Now pending before the Court is Plaintiff’s amended complaint (Dkt. No. 11), which
24 nearly word-for-word mirrors Plaintiff’s first complaint. (Dkt. 1.) Plaintiff filed two other
25 motions about which the Court withheld judgment while Plaintiff’s amended complaint was
26

27 ¹ Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of a United States
28 magistrate judge (Dkt. No. 9), and Defendants, not yet served, are not parties to this case. See
Third World Media, LLC v. Does 1-1568, 2011 WL 4344160 *3 (N.D. Cal. Sept. 15, 2011).

1 pending: appointment of counsel (Dkt. No. 3) and the appointment of Terrie Ann Wingo as
 2 his guardian ad litem (Dkt. No. 5). As Plaintiff's amended complaint fails to raise a
 3 meritorious claim for relief, both of these motions are now DENIED.

4 As noted previously, under 28 U.S.C. §1915, the Court has a continuing duty to
 5 dismiss any case in which a party seeks leave to proceed *in forma pauperis* if the Court
 6 determines that the action (1) is frivolous or malicious; (2) fails to state a claim on which
 7 relief may be granted; or (3) seeks monetary relief against a defendant who is immune from
 8 such relief. 28 U.S.C. § 1915(e)(2). As Plaintiff's amended complaint does not cure the
 9 defects of his initial pleading, the Court DISMISSES this action with prejudice for failure to
 10 state a claim.

11 DISCUSSION

12 A. Failure to State a Claim

13 A complaint fails to state a claim upon which relief may be granted if Plaintiff does not
 14 allege the "grounds" of his "entitlement to relief." Bell Atlantic Corp. v. Twombly, 550 U.S.
 15 544, 555 (2007) (quotation omitted). Essentially, a plaintiff must plead "factual content that
 16 allows the court to draw the reasonable inference that the defendant is liable for the
 17 misconduct alleged." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009). Under 42 U.S.C. §
 18 1983, any person "under color of any statute, ordinance, regulation, custom, or usage, of any
 19 State . . . [who] subjects, or causes to be subjected, any citizen of the United States or other
 20 person within the jurisdiction thereof to the deprivation of any rights, privileges, or
 21 immunities secured by the Constitution and laws, shall be liable to the party injured in an
 22 action at law, suit in equity, or other proper proceeding for redress."

23 To state a claim under § 1983, a complaint "must both (1) allege the deprivation of a
 24 right secured by the federal Constitution or statutory law, and (2) allege that the deprivation
 25 was committed by a person acting under color of state law." Anderson v. Warner, 451 F.3d
 26 1063, 1067 (9th Cir. 2006). In the Order dismissing Plaintiff's first complaint, the Court
 27 noted that Plaintiff failed to establish that any defendant was a state actor or acting under the
 28 color of state law and that an amended complaint must therefore "state who Plaintiff is

1 accusing of what particular conduct and why that conduct establishes the cause of action
 2 Plaintiff asserts.” (Dkt. No. 10.) Plaintiff’s amended complaint fails to follow this instruction.
 3 No additional facts are provided; in fact, other than slightly different verbiage on certain
 4 pages, the amended complaint is virtually identical to Plaintiff’s initial pleading. The biggest
 5 difference is that Plaintiff previously sought \$211,000,000,000,000,000,000,000 in
 6 damages and now seeks \$999,999,999, 999, 999, 999,999,999, 999. (Dkt. Nos. 1 at 19, 11 at
 7 20.)

8 Plaintiff’s amended complaint fails to state a claim for which relief can be granted
 9 because he does not articulate either that he was deprived “of a right secured by the federal
 10 Constitution or statutory law” or that any Defendants were “acting under the color of state
 11 law” in causing such a deprivation. See Fed. R. Civ. P. 12(b)(6). Consequently, Plaintiff’s
 12 claims are DISMISSED with prejudice.

13 B. Appointment of Counsel

14 Plaintiff requests the appointment of counsel. (Dkt. No. 3.) “[T]he appointment of
 15 counsel in a civil case is . . . a privilege and not a right.” Gardner v. Madden, 352 F.2d 792,
 16 793 (9th Cir. 1965); see also Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)(stating that
 17 “[g]enerally a person has no right to counsel in civil actions”). The Court “may under
 18 ‘exceptional circumstances’ appoint counsel for indigent civil litigants pursuant to 28 U.S.C. §
 19 1915(e)(1).” Palmer, 560 F.3d at 970 (citation omitted). To determine whether “exceptional
 20 circumstances” are present, the “court must evaluate the likelihood of success on the merits as
 21 well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of
 22 the legal issues involved.” Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Plaintiff has
 23 not demonstrated a likelihood of success on the merits or that this failure is due to either his
 24 difficulty articulating claims as a *pro se* litigant or the complexity of the legal issues involved.
 25 This request is DENIED.

26 C. Guardian Ad Litem

27 Plaintiff alleges he is mentally incompetent and requests that his friend Terrie Ann
 28 Wingo be appointed to serve as his guardian ad litem in this action. (Dkt. No. 5.) “In

1 California, a party is incompetent if he or she lacks the capacity to understand the nature or
2 consequences of the proceeding, or is unable to assist counsel in the preparation of the case,”
3 and a party can be found “incompetent only if a preponderance of the evidence supports such
4 a finding.” Elder-Evins v. Casey, 2012 WL 2577589 *2 (N.D. Cal. July 3, 2012).

5 Pursuant to Federal Rule of Civil Procedure 17(c), a mentally incompetent party cannot
6 proceed on his own behalf without the appointment of a guardian ad litem. In two unrelated
7 previous cases, Plaintiff also requested Terrie Ann Wingo be appointed as his guardian ad
8 litem, and both requests were denied because Wingo is not an attorney. Case No. 12-1934
9 (NC), Dkt. No. 18 at 7; Case No. 12-1929 (NC), Dkt. No. 20 at 7. The right to represent
10 oneself pro se “is personal to the litigant and does not extend to other parties or entities.”
11 Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008). Thus, Wingo cannot serve as
12 Plaintiff’s guardian ad litem without retaining an attorney herself. See Johns v. County of San
13 Diego, 114 F.3d 874, 877 (9th Cir. 1997) (stating that a parent or guardian must retain an
14 attorney before bringing an action on behalf of a minor). “While persons deemed incompetent
15 litigants may have potentially meritorious claims and therefore warrant the appointment of a
16 guardian ad litem,” Plaintiff’s previous claims were found “frivolous and not worthy of
17 appointment of a guardian ad litem.” Case No. 12-1929 (NC), Dkt. No. 20 at 7. As written,
18 Plaintiff’s current complaint likewise fails to raise meritorious claims, and no evidence has
19 been presented that Ms. Wingo has retained an attorney for this action. Consequently,
20 Plaintiff’s request for the appointment of Ms. Wingo as his guardian ad litem is DENIED.

21 CONCLUSION

22 Plaintiff’s claims do not cite specific conduct by a specific Defendant acting under the
23 color of state law as required for a sufficient § 1983 pleading. “Threadbare recitals of the
24 elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal,
25 129 S.Ct. at 1949. Since Plaintiff’s amended complaint is essentially identical to his first
26 complaint, the Court concludes that Plaintiff is unable to cure the defects in his pleading.
27 Leave to amend may be denied “where the amendment would be futile.” Gardner v. Martino,
28 563 F.3d 981, 990 (9th Cir. 2009); see also Semiconductor Energy Laboratory Co., Ltd. v.

1 Yujurio Nagata, 2012 WL 177557 *8 n.6 (N.D. Cal. Jan. 23, 2012)(finding that further
2 amendment can be denied as futile, particularly when a plaintiff has already amended the
3 complaint once). Consequently, this action is DISMISSED with prejudice. Plaintiff's
4 motions for appointment of counsel and a guardian ad litem are DENIED.

5
6 **IT IS SO ORDERED.**

7 Dated: August 8, 2012

8 
9 JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE